THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.19118 OF 2007

Between:

K.Rama Krisnha

.....Petitioner

Vs.

The State Bank of Hyderabad, represented by its Branch Manager, Karnataka State and another

.....Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.19118 OF 2007

O R D E R:

This Court ordered notice before admission on 10.09.2007 and directed *status quo* to be maintained for a period of four weeks and subsequent thereto, the interim order was extended by four more weeks. M.V.M.P.No.2739 of 2007 is filed to vacate the interim order. At the request of the learned counsel on record, the writ petition is being takenup.

The writ petition is filed for a writ of Mandamus declaring the action of the respondent authorities in issuing notice ARD/SARFAESI/9/2007-08 dated 22.08.2007 under section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 as arbitrary, illegal, violative of Art.14, 21 and 300-A of the Constitution of India and consequently set aside the same and pass such other order or orders as this Court may deem fit and proper in the circumstances of the case.

It is stated that the petitioner was the Director of B.L.Chemicals Limited. The said industry B.l.chemicals Limited obtained loan from the first respondent. The first respondent filed O.A.No.121 of 2002 on the file of Debt Recovery Tribunal, Bangalore. It would be pertinent to mention that the first respondent bank has recovered large sums of amount towards loan account from the B.L.Chemicals Limited.

However, after the loans were recovered, no statement of account of outstanding loan of B.L.Chemicals Limited was served on the petitioner at any time. However, to the surprise of the petitioner, the second respondent is presently claiming to have acquired the assets of the first respondent which have been mortgaged by the petitioner and others. However, it is stated that the nature of acquisition and the terms are not to the knowledge of the petitioner. The first respondent bank was obligated to inform the petitioner and other guarantors of the loan account of B.L.Chemicals Limited, the nature of transaction between the respondent No.1 and 2. The action of the first respondent in transferring the loan account to the second respondent is contrary to the loan agreement and also violation of Art.14 of the Constitution of India. The petitioner and other guarantors would have complied with the very same understanding reached between the respondent No.1 and 2 had they been put on notice. The understanding between respondent No.1 and 2 cannot be to the detriment of the guarantors or the loanee. The second respondent has no authorisation to issue notice to the petitioner under the Act.

Further, it is stated that the second respondent has recently issued notice under Section 13(2) of the Act. The said notice was served and accepted only by Sri K.V.Satyanarayana, Managing Director of B.L.Chemicals Limited. Sri K.V.Satyanarayana has also entered into an agreement with Kotak Mahindra Bank-second respondent for settlement of the outstanding loan of Rs.100 lakhs. The mode of payment between the second respondent and K.V.Satyanrayana are not to the knowledge of the petitioner. Further, it is stated that the second respondent now issued notice under Section 13(4) of the Act threatening to take possession of the schedule mentioned property on 10.09.2007. The notice clearly indicates that

'B' schedule property is a residential house, wherein the petitioner is residing with his family including his old mother. It is also stated that apart from the above post of Debt Recovery Tribunal is vacant, the petitioner specifically pleads that the proceedings initiated by the second respondent are without jurisdiction. The second respondent cannot be deemed to be part of the first respondent for the purpose of initiating proceedings under the Act. Hence, the petitioner had approached this Court praying to set aside the notice, dated 22.08.2007.

In the counter affidavit filed by the second respondent, following preliminary grounds have been raised.

> "1) Non-joinder of necessary parties as the writ petitioner has not joined the B.L.Chemicals Limited ("Company") and other Guarantors as parties to the present writ.
> 2) The writ petitioner is entitled to file any Appeal only after the possession of the charged properties is taken over under Section 13(4) of the Securitisation Act by any Secured Creditors and in the present matter, the Respondent No.2 has not taken possession and therefore no appeal can be initiated by the writ petitioner in any court.
> 3) Alternative remedy available under the Securitisation Act to file an appeal with the Debts Recovery Tribunal and hence, the writ petitioner is not entitled to approach this Hon'ble Court and invoke writ jurisdiction."

It is also averred that it is not correct to state that the Respondent No.1 recovered large sum of money from company and no statement of account of outstanding loan was served upon by the writ petitioner. The statement of account of the dues owed by the Company forms part of original application filed before the Debts Recovery Tribunal, Bangalore. Despite, the writ petitioner knowing the said facts the averments have been made only for the purpose to prejudice this

Court against the Respondent No.2. It is true that the Respondent No.2 has acquired the assets of the Respondent No.1, which is legally permissible and unobjectionable.

Further, it is stated that the acquisition is purely a commercial transaction between two banks and no Courts/Client can interfere in the said commercial transaction and the same was held in the matter of **Transcore (M/s.) Vs.Union of India and another**[1].

It is further averred that the Assignment of debts by the respondent No.1 together with underlying securities to the Responent No.2 has happened in accordance to the guidelines of the Reserve Bank of India. The transaction is a "True Sale" without recourse and on cash basis. Pursuant to the above stated guidelines, the transaction has been completed and the non-performing asset has been taken out of the books of the respondent No.1. The Respondent No.2 steps into the shoes of the Respondent No.1 and the Petitioner or the Company do not suffer any disadvantage or prejudice on account of the same. No violation of Article 14 of the Constitution of India can therefore be alleged and it is completely false to state that the transfer of loan account is contrary to the loan agreement. It is incorrect to state that the understanding is to the detriment to the guarantor and that the Respondent No.2 has no authority under the Securitisation Act to issue notice. These contentions are legally untenable and are incorrect.

It is further averred that Respondent No.2 has issued notice under Section 13(2) of Securitisation Act. The notice was addressed to the Company and all guarantors including the petitioner after enough opportunity was given to company and guarantors to repay their dues. It is not correct to state that the Respondent No.2 has entered into any agreement with Company/ the Managing Director for

settlement of the outstanding loan of Rs.100.00 lakhs. The respondent No.2 states that the company had approached he Respondent No.2 for settlement but in view of non-adherence of the terms and conditions of the said settlement, the Respondent No.2 cancelled/revoked the settlement terms and the same was communicated to the Company/its guarantors. Further in reply to averments of para 6 of the affidavit filed in support of the petition it is submitted that the Respondent No.2 has issued notice under Section 13(4) of the Securitisation Act thereby fixing an appointment for taking possession on 10.9.2007. It is pertinent to note that the Company had requested the Respondent No.2 vide its letter, dated 7.9.2007 to make payment of the dues on or before 30.9.2007 and atleast 50% of the dues on or before 15.9.2007. Based on the assurance given by the Company of repayment of the dues, the Respondent No.2 decided not to take possession of the charged properties. Though there is no necessity of issuing notice under Section 13(4) and the assets could be taken over directly. It is only out of good faith that the Respondent No.2 issued notice to the writ petitioner for enabling the writ petitioner to vacate the premises and hand it over in a vacant state. The writ petitioner is seeking to take inequitable advantage out of the lenience shown by the Respondent No.2. Hereto marked and annexed and marked as “Annexure R2/1” is a fax copy of the letter, dated 7.9.2007 from the company.

It is further averred in reply to paras 7 & 8 that as per the Securitisation Act, the writ petitioner has an alternate equitable remedy available of filing an Appeal to challenge the action of the Lender only after the Lender takes over the possession under Section 13(4) of the Securitisation Act. In case the writ petitioner is aggrieved by an action under Securitisation Act, the writ petitioner has the right to file an Appeal with the Debts Recovery Tribunal and not to any other Courts

as the Debts Recovery Tribunals have the exclusive jurisdiction to entertain such Appeals. The Writ petitioner cannot file any writ challenging an action under Section 13(4) at the High Court and High Court should not entertain any such writ when the alternative remedy is available to the writ petitioner as the same was held in the matter of **Ashok Sharad Vs. SmallIndustries Development Bank of India, Hyd**[2]**.** It is also stated that even if the court of the Regular Presiding Officer of DRT is vacant, the Appeal can be filed before the In charge Presiding Officer of the Debts Recovery Tribunal. The Writ Petitioner is not entitled to approach this Court when they have alternative remedy available as per the Securitisation Act. That apart merely on the ground that the Presiding Officer isnot available could not automatically entitle the Writ Petitioner to claim interim protection as an Appeal can only be filed after possession under Section 13(4) of Securitization Act is taken. It is wholly incorrect to state that the proceedings initiated by the Respondent No.2 are without jurisdiction and that the Respondent No.2 cannot initiate any proceedings under the Act before this Court.

It is also averred that the averments of para 9 are legally untenable and are denied. It is to be stated that the Assignment is a valid assignment and under the guidelines of the Reserve Bank of India. Without prejudice to the rights of the Respondent No.2 for the time being if it is assumed that assignment is not valid, on what basi the Company and one of the Guarantors by name K.V.Satyanarayana representing other guarantors has negotiated the settlement with the Respondent No.2 from time to time. The act of this clearly demonstrates the intention of the Company and its guarantors to cheat the Respondent No.2 This is also clearly evident when the Writ Petitioner has specifically chosen not to include/implead Company

and other guarantors as necessary parties.

Thus it is stated that the Writ Petitioner has approached this Court with unclean hands and has not made out any case and it not entitled for the relief sought for in the writ petition.

In the light of the respective stands taken by the parties, this Court is of the considered opinion that in a way, the present writ petition is pre mature and even otherwise, after appropriate action being taken under Section 13(4) of the Act, the writ petitioner is having an effective alternative remedy by way of an appeal to be preferred before the Debts Recovery Tribunal. When that being so, in the light of the specific stand taken before this Court, the writ petition at this stage cannot be maintained and accordingly, the writ petition shall stand dismissed.

The writ petition is dismissed. No order as to costs.

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P.S.NARAYANA J.,

Dt.01.11.2007
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[1]) 2007(1) ALD 109 (SC)

[2]) 2007(5) ALD 866 (DB)